

**BEFORE THE AIR QUALITY CONTROL COMMISSION  
STATE OF COLORADO**

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**IN THE MATTER OF PROPOSED REVISIONS TO REGULATION NUMBER 3  
MAY 16-19, 2023 HEARING.**

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**PREHEARING STATEMENT OF THE COLORADO DEPARTMENT OF PUBLIC  
HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION**

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The Colorado Department of Public Health and Environment (“CDPHE” or the “Department”), Air Pollution Control Division (the “Division”) hereby submits its Prehearing Statement in this matter, discussing the policy, factual, and legal grounds for the proposed revisions to Regulation Number 3.

**I. EXECUTIVE SUMMARY**

**A. Summary of Proposal**

With this submittal, the Division is proposing revisions to Regulation Number 3 in response to directives established in House Bill (“HB”) 21-1266, also known as the Environmental Justice Act. Broadly, the Environmental Justice Act aims to ensure that all Colorado communities have equal access to clean air and are not forced to bear disparate environmental health impacts. Specifically, HB 21-1266 revises section 25-7-114.4, C.R.S., to require the Air Quality Control Commission (the “Commission”) to adopt rules by no later than June 1, 2023, to identify Disproportionately Impacted Communities, provide for enhanced modeling and monitoring requirements for new and modified sources of affected pollutants in Disproportionately Impacted Communities, and consider enhanced monitoring at existing sources of affected pollutants.

With this rulemaking, the Division is proposing revisions to Regulation Number 3 to respond to both statutory requirements outlined in HB 21-1266 as well as feedback received during public outreach sessions. The proposed revisions include:

1. Revisions to Part A, Section I.B. to include a definition for “Disproportionately Impacted Community” and identification of Disproportionately Impacted Communities;
2. Revisions to Part B, Section III.C. to revise permit application requirements for sources to include an environmental justice summary and to provide for enhanced modeling requirements;
3. Revisions to Part B, Section III.D. to include an expansion of Reasonably Available Control Technology (“RACT”) requirements;

4. Revisions to Part B, Section III.K. to include enhanced monitoring requirements for new and modified sources in disproportionately impacted communities; and
5. Revisions to Part C, Section V.C. to allow for enhanced monitoring requirements in renewed operating permits for facilities located in Disproportionately Impacted Communities.

These proposed revisions are discussed in more detail in the Memorandum of Notice (“MON”) submitted by the Division with the Request for Rulemaking.<sup>1</sup> Further, as presented in Section I.B and discussed in detail in **section II** of this Prehearing Statement, the Division is seeking to refine and further strengthen its proposal with additional proposed revisions based on ongoing stakeholder engagement.

## **B. Summary of Stakeholder Process and Proposed Revisions**

To prepare its proposal to the Commission, the Division engaged in intensive outreach efforts. Through these outreach efforts, the Division heard from community members and incorporated their feedback into its proposal. A detailed discussion of these stakeholder meetings and how feedback from these meetings were incorporated into the Division’s initial proposal is presented in the MON included with the Division’s Request for Rulemaking.<sup>2</sup>

Following the request, the Division continued to engage with stakeholders and, based on feedback received during these discussions, continues to clarify and make amendments to the initial proposal submitted with the request for rulemaking. Proposed revisions include:

1. Revisions to the proposed definitions of Cumulatively Impacted Community, and Socioeconomically Vulnerable Community to provide additional clarity and alignment with the recommendations of the Environmental Justice Action Task Force (“EJATF”);
2. Revisions to include definitions for Affected Pollutants, Affected Construction Source, and Occupied Areas;
3. Revisions to the proposed RACT requirements to provide additional clarity around applicability;
4. Revisions to the proposed requirements for the Environmental Justice Summary to provide additional clarity around applicability;

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<sup>1</sup> See APCD, Regulation Number 3 Memorandum of Notice (January 5, 2023), at 1-3.

<sup>2</sup> See *id.* at 3 -6.

5. Revisions to the discussion on enhanced modeling to provide additional specificity;
6. Revisions to the discussion on enhanced monitoring requirements to provide additional specificity; and
7. Revisions to Part B, Section II.A.6 to ensure sources in Disproportionately Impact Communities are not able to qualify for a minor modification for projects that would otherwise qualify as minor New Source Review (“NSR”) permitting actions under Part B, and revisions to Part C, Section III.B.2 to clarify significant modifications are required to obtain a construction permit.

These revisions are discussed in further detail in the following sections. The Division looks forward to the opportunity to continue engaging with stakeholders and parties on these revisions and other potential revisions that could be made to strengthen the proposal and narrow the scope of contested issues to be heard by the Commission in May.

## C. Contents of Prehearing Statement

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#### **D. Summary of Exhibits**

The documents cited in this Prehearing Statement that are not already a part of the record are included as exhibits. The Division is additionally submitting:

- Proposed revisions to Regulation Number 3;
- Proposed revisions to the Statement of Basis and Purpose (“SBAP”) for Regulation Number 3; and
- Final Economic Impact Analysis (“EIA”).

The exhibits are cited in this Prehearing Statement as support for specific positions; however, a citation to one exhibit is not intended to preclude the Division’s reliance on another or other future exhibits for the same position. The Division will supplement exhibits to respond to other Parties’ prehearing statements, as necessary.

#### **E. Estimate of Time Necessary for Presentation**

The Division estimates that it will require approximately 1.5 hours (90 minutes) during the hearing to present its case-in-chief, cross-examine witnesses, and present rebuttal.

## **II. DISCUSSION OF PROPOSED REVISIONS AND BRIEFING OF FACTUAL AND LEGAL ISSUES BEFORE THE COMMISSION**

#### **A. Revision to Proposed Definitions**

The Division is proposing revisions to the definitions of Cumulatively Impacted Community and Socioeconomically Vulnerable Community to better align with the recommendations of the EJATF, and revisions to the SBAP to provide additional clarity of the relationship between the definition of Disproportionately Impacted Community and the sub-definitions of Cumulatively Impacted Community and Socioeconomically Vulnerable Community.

In discussions with stakeholders following the initial proposal, it was brought to the Division’s attention that there was confusion about using multiple terms to refer to Disproportionately Impacted Communities. The Division wishes to provide additional clarity on the development of these definitions and their intended uses in Regulation 3.

The Division is first proposing that the Commission broadly identify and define Disproportionately Impacted Communities using the statutory definition codified in section 24-4-109(2)(b)(II), C.R.S. For the purposes of this rulemaking, however, the Division believes it is critical for the Commission to utilize a publicly accessible, data driven, transparent, and consistent method to identify Disproportionately Impacted Communities. Given this need, the Division is proposing that the Commission utilize Regulation 3 specific definitions that reference Colorado EnviroScreen to identify communities that fall within the proposed definition of Disproportionately Impacted Community.

The Division believes that using Colorado EnviroScreen is both appropriate and advantageous for the Commission to identify Disproportionately Impacted Communities because it provides clear, transparent, and readily accessible data that external stakeholders can use to quickly identify Disproportionately Impacted Communities without having to undertake their own independent geospatial analyses.

Colorado EnviroScreen was developed for CDPHE by a team of contractors from Colorado State University's ("CSU") Rojas Lab, Geospatial Centroid, and the Institute for the Built Environment selected through a competitive bidding process. Toxicologists and environmental epidemiologists from the Department's Toxicology and Environmental Epidemiology Office ("TEEO") and staff from the Environmental Justice Program ("EJP") worked with the CSU team to develop the tool. The Department launched Colorado EnviroScreen 1.0 in June 2022 after an extensive year-long engagement process. That process included multiple public meetings, dozens of interviews and focus groups, and two rounds of public beta testing to obtain input from over 100 stakeholders, including numerous scientific and technical experts.<sup>3</sup>

Colorado EnviroScreen combines data from 35 different indicators that were carefully chosen by evaluating the best available data including data sets used in similar tools at the state and federal level.<sup>4</sup> Many of the indicators come from the federal government's EJScreen tool, while others were created using state-specific datasets to ensure the tool used as recent and as accurate data as possible.<sup>5</sup> The overall suite of indicators used was selected by expert environmental epidemiologists on the development team to best identify potential environmental health risks through the mathematical weighting process, and to ensure that there were complementary data sets. For example, to supplement top-down air quality modeling indicators for ozone and fine particulate matter ("PM<sub>2.5</sub>"), the tool also includes air quality indicators created using a bottom-up emissions inventory—the Department's Air Pollution Emission Notice ("APEN") database. While the data in any single dataset may not be perfect, the overall suite of indicators was designed to account for the shortcomings in the individual datasets to ensure that the overall score provided by the tool through the weighting methodology is as accurate as possible. The development of EnviroScreen 2.0 will ensure indicators are updated to the latest available data and reviewed for validity.

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<sup>3</sup> See generally APCD\_PHS\_EX-001 (Rojas, D., et al., *Colorado EnviroScreen Community Engagement Report* (June 28, 2022)).

<sup>4</sup> See generally APCD\_PHS\_EX-002 (Rojas, D., et al., *Colorado EnviroScreen v 1.0 Technical Documentation* (Jan. 2022)).

<sup>5</sup> See generally APCD\_PHS\_EX-003 (U.S. Env'tl. Prot. Agency, *EJSCREEN: Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation* (Sept. 2019)).

Colorado EnviroScreen’s methodology is based on the methodology used by California’s CalEnviroScreen, which sets a benchmark for other state screening tools.<sup>6</sup> A recent peer-reviewed study by the U.S. Centers for Disease Control and Prevention (“CDC”) concluded that the methodology used in CalEnviroScreen and replicated in Colorado EnviroScreen is equally valid as the methodology used in equivalent federal tools.<sup>7</sup> An analysis by Washington state comparing environmental and climate justice screening tools across state agencies recognized Colorado EnviroScreen as one of the best tools available nationally, and as the only tool to include climate vulnerability indicators.<sup>8</sup> Another recent national comparative study that established a framework for comparing national, state, and local data tools specifically recognized Colorado EnviroScreen’s strengths in several areas where it found other state or federal agency tools lacking.<sup>9</sup>

Colorado EnviroScreen was also designed to be radically transparent and as easy to use as possible. All GIS files for the tool are available to download on CDPHE’s webpage.<sup>10</sup> The tool was developed in the R-Shiny platform and the code for the tool is open source and available for download through GitHub.<sup>11</sup> The Department has provided basic user guides,<sup>12</sup> FAQ,<sup>13</sup> training videos,<sup>14</sup> and dozens of presentations for various audiences as well as formal community workshops about using the tool.<sup>15</sup> The Colorado EnviroScreen tool and supporting documentation are fully available in Spanish.<sup>16</sup>

The Division developed the framework for this regulatory proposal to identify and afford additional protections to communities experiencing disproportionate impacts from cumulative environmental burdens. The Division is identifying this subset of Disproportionately Impacted Communities as Cumulatively Impacted Communities and is proposing that the Commission define those Cumulatively Impacted Communities as having a Colorado EnviroScreen score above the 80th percentile. Using Colorado EnviroScreen to identify communities that meet the cumulative impacts prong of the statutory definition of Disproportionately Impacted Community is warranted based on consultations with the EJP and recommendations of the EJATF.<sup>17</sup> The EJATF recommended using the 80th percentile in Colorado EnviroScreen to identify

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<sup>6</sup> See generally APCD\_PHS\_EX-004 (Zeise, L., et al., *CalEnviroScreen 4.0* (Oct. 2021)).

<sup>7</sup> See APCD\_PHS\_EX-005 (Owusu, C., et al., *Developing a Granular Scale Environmental Burden Index (EBI) for Diverse Land Cover Types Across the Contiguous United States*, 838 J. Sci. Total Env’t 838 (2022)), at 8–10.

<sup>8</sup> See generally APCD\_PHS\_EX-006 (Wash. State Inst. for Pub. Policy, *Technical Review of the Washington State Environmental Health Disparities Map* (Nov. 2022)).

<sup>9</sup> See APCD\_PHS\_EX-007 (Balakrishnan C., et al., *Screening for Environmental Justice: A Framework for Comparing National, State, and Local Data Tools*, (2022)), at 16, 20.

<sup>10</sup> APCD\_PHS\_EX-008 (Colo. Dep’t Pub. Health & Env’t, *Colorado EnviroScreen v1 Block Group* (Feb. 2023)).

<sup>11</sup> GitHub, *Colorado EnviroScreen*.

<sup>12</sup> APCD\_PHS\_EX-009 (Colo. Dep’t Pub. Health & Env’t, *Colorado EnviroScreen User Guides*).

<sup>13</sup> APCD\_PHS\_EX-010 (Colo. Dep’t Pub. Health & Env’t, *Colorado EnviroScreen Frequently Asked Questions*).

<sup>14</sup> APCD\_PHS\_EX-011 Colo. Dep’t Pub. Health & Env’t, *Colorado EnviroScreen Video Demonstrations*).

<sup>15</sup> APCE\_PHS\_EX-012 (Colo. Dep’t Pub. Health & Env’t, *Community EnviroScreen Webinar Video Recording*).

<sup>16</sup> Colo. Dep’t Pub. Health & Env’t, *Colorado EnviroScreen en español*.

<sup>17</sup> See APCD\_PHS\_EX-013 (Colorado Environmental Justice Action Task Force, *Final Report of Recommendations* (Nov. 14, 2022)), at 31.

Cumulative Impacted Communities based on extensive discussions and consideration of the relevant data<sup>18</sup> and established EPA practices.<sup>19</sup>

The Division is further proposing to use the term Socioeconomically Vulnerable Communities to define all Disproportionately Impacted Communities that are not Cumulatively Impacted Communities. Socioeconomically Vulnerable Communities are Disproportionately Impacted Communities that meet the demographic prongs of the statutory definition of Disproportionately Impacted Community but have a Colorado EnviroScreen score at or below the 80th percentile.

In multiple Requests for Party Status, some Parties raised concerns about using Colorado EnviroScreen to identify Disproportionately Impacted Communities.<sup>20</sup> Several parties specifically raised concerns about using Colorado EnviroScreen in rural areas. The Division believes it is appropriate and necessary to include rural communities when considering the applicability of enhanced permitting provisions because the data demonstrates that some rural communities are experiencing disproportionate impacts. However, the Division recognizes that census block groups are geographically larger in rural communities than urban communities. The Division has structured how specific regulatory requirements are implemented to consider rural and remote locations.

The Community and Environmental Partners raised concerns about using Colorado EnviroScreen to identify Disproportionately Impacted Communities, and the authority of the Commission to adopt a rule that uses the tool. The Division believes it is well within the Commission's authority to define Disproportionately Impacted Communities and to use the Colorado EnviroScreen tool to aid in the identification of those communities. Section 25-7-114.4(5), C.R.S., refers to "disproportionately impacted communities" and states, "[i]n adopting rules to implement this subsection (5), the commission shall identify disproportionately impacted communities." The proposed revisions define "disproportionately impacted community" by referring to section 24-4-109(2)(b)(II), C.R.S. The definition set forth in section 24-4-109(2)(b)(II), C.R.S., does not otherwise apply to the phrase "disproportionately impacted community" as it is used in section 25-7-114.4(5), C.R.S. *See* § 24-4-109(2)(b), C.R.S. (stating that the definition of "disproportionately impacted community" applies only in sections 24-4-109, 25-1-133, 25-1-134, and 25-7-105(1)(e), C.R.S., unless the context otherwise requires). This gives the Commission flexibility in how it defines "disproportionately impacted community." In addition, the Commission's use of the Colorado EnviroScreen Tool to aid in the identification of Disproportionately Impacted Communities does not mean that the Commission itself is no longer the entity identifying Disproportionately Impacted Communities. It is the Commission's decision to use the Colorado EnviroScreen tool to aid in the identification of Disproportionately Impacted Communities. The fact that Colorado EnviroScreen is maintained by the CDPHE's Environmental Justice Program does not somehow take this decision away from the Commission.

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<sup>18</sup> *See id.*

<sup>19</sup> *See* APCD\_PHS\_EX-014 (United States Environmental Protection Agency, *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (June 2016)), at 43.

<sup>20</sup> *See* CEP\_Req. Party Status (Feb. 13, 2023), at 4; C3\_Req. Party Status (Feb. 13, 2023), at 1; DMCC\_Req. Party Status (Feb. 13, 2023), at 1; API-CO\_Req. Party Status (Feb. 13, 2023), at 1; COGA\_Req. Party Status (Feb. 13, 2023), at 1; WSCOGA\_Req. Party Status (Feb. 13, 2023), at 1; and Williams\_Req. Party Status (Feb. 13, 2023), at 1.



Some parties have raised concerns about the Division proposing sub-definitions of Disproportionately Impacted Communities.<sup>21</sup> The Division appreciates these parties' feedback. However, upon additional consideration, the Division continues to believe that this approach is appropriate and creates an appropriately protective standard for Coloradans living in Disproportionately Impacted Communities.

Having the explicitly defined sub-definitions allows for the clear and appropriate assessment of more stringent requirements in those communities that experience the greatest cumulative impacts and are, therefore, most in need of additional environmental protections. The proposed rules provide protections to all Disproportionately Impacted Communities, including Socioeconomically Vulnerable Communities that meet the demographic prongs of the definition of Disproportionately Impacted Community in the Environmental Justice Act. However, the proposed rules provide a greater degree of protection to Cumulatively Impacted Communities because they experience more cumulative impacts.

Additionally, the Division recognizes dividing Disproportionately Impacted Communities into two categories can raise concerns that the impacts some communities experiences are viewed as less important. The Division wishes to take this opportunity to acknowledge the historic injustices that have been faced by all Disproportionately Impacted Communities. The Division reiterates that with this rulemaking, the Division is proposing actions that are responsive to the impacts being experienced by all Disproportionately Impacted Communities by using readily available data to assess where the greatest cumulative environmental impacts are being experienced and assessing more stringent environmental protections in those communities. By identifying these Cumulatively Impacted Communities it is not the Division's intent to communicate that other burdens are less critical, but rather to prioritize environmental protections in the communities where they can have the greatest positive impact.

Some parties also raised concerns about whether the 80th percentile score in Colorado EnviroScreen is sufficiently protectively of Disproportionately Impacted Communities.<sup>22</sup> The Division believes that using the 80th percentile score in Colorado EnviroScreen to identify communities that meet the cumulative impacts prong of the definition in the Environmental Justice Act is appropriate in this rulemaking because, as discussed above, it is informed by subject matter expert feedback and robust community input through the Environmental Justice Action Task Force process. The Division does recognize, however, that other approaches could be appropriate in other contexts, which is why the Division proposes that the Commission only define Cumulatively Impacted Community and Socioeconomically Vulnerable Community for use in Regulation 3 when a broad range of source types and pollutants are being considered.

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<sup>21</sup> See CEP\_Req. Party Status (Feb. 13, 2023), at 4.

<sup>22</sup> See CEO\_Req. Party Status (Feb. 13, 2023), at 4.

## **B. Revisions to RACT Requirements**

The Divisions is proposing to clarify the applicability of the proposed RACT requirements for volatile organic compounds (“VOCs”), nitrogen oxides (“NO<sub>x</sub>”), and PM<sub>2.5</sub> through the addition of language specifying the RACT requirements apply to new sources and sources of air pollution affected by the modification of existing sources, and to clarify that RACT need only be applied for the pollutant(s) for which the permitting actions generate an overall increase in potential emissions of VOC, NO<sub>x</sub>, and/or PM<sub>2.5</sub>.

## **C. Revisions to Environmental Justice Summary Requirements**

The Division is proposing to refine and revise the requirements for environmental justice summaries. The Division is providing additional clarifying language that the requested actions of Part B, Section III.B.5.d. for including additional documentation related to the meaningful involvement of Disproportionately Impacted Community members pertain to permitting actions being undertaken in Disproportionately Impacted Communities, and is specifying these requirements as applying when a Facility is proposing an action that would generate an increase in emissions of affected pollutants as identified by HB 21-1266 (VOC, NO<sub>x</sub>, PM<sub>2.5</sub>, and benzene, toluene, ethylbenzene, and xylenes (“BTEX”)) or otherwise imposes an additional environmental burden as identified by the Division during the permit review process. Further, the Division is adding language to the SBAP to clarify that the Division is requesting that the actions outlined in Part B, Section III.B.5.d should be taken by the owner or operator of the Facility before submitting the permit application as part of the planning process for the construction of the Facility when possible; and while applicants are encouraged to engage in the efforts outlined in section III.C.5.d. to ensure the timely and meaningful engagement of community members regarding actions that could pose a further burden to their community’s air quality, and to provide the Division with documentation of any such efforts undertaken by the source, at this time these components are not substantive application requirements.

Additionally, the Division is specifying a requirement for facilities located in more than one census block group to submit an Environmental Justice Summary for each census block group within which they are located.

## **D. Revisions to Modeling Requirements**

In addition to reiterating the Division’s authority to establish more protective modeling thresholds for facilities in Disproportionately Impacted Communities as presented in the MON and documented in the proposed SBAP, the Division is proposing additional modeling requirements in this iteration of the proposed revisions to Regulation 3. Additional requirements include the requirement for projects (i.e., new or modified sources covered by the permit application) in Cumulatively Impacted Communities to model emissions of any affected pollutants, excluding total VOCs, if the affected pollutant’s potential to emit exceeds the applicable Significant Emission Rate (“SER”) established in Regulation 3, Part D, Section II.A.44 or if the potential to emit for BTEX exceeds ten tons per year or more of benzene, toluene, ethylbenzene, and/or xylenes, individually, or twenty-five tons per year or more of any combination of BTEX; and/or result in total Facility emissions above ten tons per year or more of either benzene, toluene,

ethylbenzene, or xylene, individually, or twenty-five tons per year or more of any combination of BTEX (these thresholds are detailed in Regulation 3, Part B, Section II.A.2.a.(i) and (ii)). These modeling results will be utilized to assess whether source specific monitoring is required for these pollutants and, if so, what monitoring technology is appropriate.

Multiple parties<sup>23</sup> indicated a desire for additional clarity regarding enhanced modeling requirements, with several parties<sup>24</sup> also raising concerns regarding how enhanced modeling provisions would be appropriately assessed. To address these concerns, the Division is providing additional specificity in the proposed regulatory language, as discussed above, and additional SBAP language to clarify the implementation of enhanced modeling. The assessment of when enhanced modeling is necessary will be completed by the Permit Modeling Unit in consultation with updated modeling thresholds being incorporated into forthcoming Modeling Guidelines.

Multiple parties<sup>25</sup> have communicated concerns regarding the cost of additional modeling, and that additional review of enhanced modeling may lead to delays in permit issuance. The Division is sensitive to these concerns and would like to take this opportunity to note the Division has recently hired six additional staff to support the efforts of the Permit Modeling Unit, with plans to expand capacity with the hiring of an additional two staff members.

Parties<sup>26</sup> have also expressed concerns regarding the resources required of regulated sources to complete modeling. Again, the Division is sensitive to these concerns and has been intentional in the construction of these requirements to ensure necessary and meaningful protections for Disproportionately Impacted Communities while attempting to minimize the burden placed on the regulated community through targeted enhancements in a context-sensitive manner rather than a one-size-fits-all approach and building enhanced modeling requirements onto the framework of existing modeling requirements.

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<sup>23</sup> See CEP\_Req. Party Status (Feb. 13, 2023); DMCC\_Req. Party Status (Feb. 13, 2023); API-CO\_Req. Party Status (Feb. 13, 2023); COGA\_Req. Party Status (Feb. 13, 2023); WSCOGA\_Req. Party Status (Feb. 13, 2023); C3\_Req. Party Status (Feb. 13, 2023); Williams\_Req. Party Status (Feb. 13, 2023); and LGC\_Req. Party Status (Feb. 13, 2023).

<sup>24</sup> See DMCC\_Req. Party Status (Feb. 13, 2023); API-CO\_Req. Party Status (Feb. 13, 2023); COGA\_Req. Party Status (Feb. 13, 2023); WSCOGA\_Req. Party Status (Feb. 13, 2023); C3\_Req. Party Status (Feb. 13, 2023); and Williams\_Req. Party Status (Feb. 13, 2023).

<sup>25</sup> See EVRAZ\_Req. Party Status (Feb. 13, 2023); and GCC\_Req. Party Status (Feb. 13, 2023).

<sup>26</sup> See EVRAZ\_Req. Party Status (Feb. 13, 2023); and GCC\_Req. Party Status (Feb. 13, 2023).

## **E. Revisions to Monitoring Requirements**

In response to requests for additional specificity regarding the applicability of enhanced monitoring from many parties and stakeholders<sup>27</sup> to ensure regulatory clarity and that necessary protections are being provided to Disproportionately Impacted Communities, the Division is revising its proposal to utilize a multitiered screening process for assessing when additional source specific monitoring would be required for new and modified sources:

- First, a Project will determine if it is located in a Cumulatively Impacted Community or Socioeconomically Vulnerable Community. If the Project is in a Socioeconomically Vulnerable Community, it will participate in community monitoring. If the Project is in a Cumulatively Impacted Community, it will continue evaluating if source specific monitoring is required.
- If a Project is located in a Cumulatively Impacted Community, it would compare its potential emissions of affected pollutants, excluding total VOCs, to the SER for criteria pollutants established in Regulation 3, Part D, Section II.A.44 or to the BTEX thresholds detailed in Regulation 3, Part B, Section II.A.2.a.(i) and (ii),<sup>28</sup> as appropriate. For any pollutant emitted in excess of these emissions thresholds, or if the total Facility emissions are in excess of major source thresholds for BTEX, the Project will continue evaluating if source specific monitoring is required. If all affected pollutants are emitted at a rate below the applicable SER or major source thresholds for BTEX, the Project will participate in community monitoring.
- If a Project emits an affected pollutant in excess of the applicable SER or major source thresholds for BTEX, dispersion modeling must be completed for each affected pollutant emitted in excess of the applicable SER, excluding VOCs, or major source thresholds for BTEX to determine the pollutant impact at and beyond the Project boundary.

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<sup>27</sup> See CEP\_Req. Party Status (Feb. 13, 2023); DMCC\_Req. Party Status (Feb. 13, 2023); API-CO\_Req. Party Status (Feb. 13, 2023); COGA\_Req. Party Status (Feb. 13, 2023); WSCOGA\_Req. Party Status (Feb. 13, 2023); Chamber\_Req. Party Status (Feb. 13, 2023); C3\_Req. Party Status (Feb. 13, 2023); PDC\_Req. Party Status (Feb. 13, 2023); Civitas\_Req. Party Status (Feb. 13, 2023); EVRAZ\_Req. Party Status (Feb. 13, 2023); GCC\_Req. Party Status (Feb. 13, 2023); CEO\_Req. Party Status (Feb. 13, 2023); OXY\_Req. Party Status (Feb. 13, 2023); LGC\_Req. Party Status (Feb. 13, 2023); CUC\_Req. Party Status (Feb. 13, 2023); CMA\_Req. Party Status (Feb. 13, 2023); WRLG\_Req. Party Status (Feb. 13, 2023); WeldCo\_Req. Party Status (Feb. 13, 2023).

<sup>28</sup> This PHS will refer to the BTEX thresholds specified by Regulation 3, Part B, Section II.A.2.a.(i) and (ii) as “major source thresholds for BTEX.” See 5 CCR 1001-5(B)(II.A.2.a.) (i) and -(ii).

- Modeling results for each pollutant will then be compared to the appropriate Disproportionately Impacted Community Monitoring Threshold as presented in Table 1. These monitoring screening thresholds were assessed with consideration of CDPHE's Health Guideline Values<sup>29</sup> and U.S. EPA's National Ambient Air Quality Standards.<sup>30</sup> If all modeled impacts are below Disproportionately Impacted Community Monitoring Thresholds, the Project will participate in community monitoring. For each pollutant with a modeled impact in excess of the Disproportionately Impacted Community Monitoring Thresholds, the Project will need to develop and implement a Division-approved source specific monitoring plan. Source specific monitoring can include: fenceline monitoring, operation of a community monitor at or near occupied areas with high modeled impacts, or the use of parametric modeling in combination with source specific data to demonstrate actual Facility operations are in accordance with modeled parameters. The Division is also open to the development of source specific modeling plan templates that, when the template is approved by the Division, can be adopted and implemented by Projects subject to source specific monitoring requirements.

Table 1 – Disproportionately Impacted Community Monitoring Thresholds	
Benzene	≥ 5 ppb
Toluene	≥ 664 ppb
Ethylbenzene	≥ 115 ppb
Xylene	≥ 12 ppb
Fine particulate matter	> 6 µg/m <sup>3</sup>
Nitrogen Oxide	> 50 µg/m <sup>3</sup>

The Division is additionally revising its proposal to utilize a multitiered screening process for assessing when additional source specific modeling would be required for existing sources in Disproportionately Impacted Communities.

- First, a Facility seeking to renew an operating permit will determine if it is located in a Cumulatively Impacted Community or Socioeconomically Vulnerable Community. If the Facility is in a Socioeconomically Vulnerable Community, it will participate in community monitoring. If the Facility is in a Cumulatively Impacted Community, it will continue evaluating if source specific monitoring is required.
- If a Facility seeking to renew an operating permit is located in a Cumulatively Impacted Community it will compare the aggregated emissions of Affected Pollutants permitted by modifications that occurred during the period covered by the operating permit being renewed to the SER, excluding total VOCs, or major source thresholds for BTEX, as appropriate. If all affected pollutants are emitted at a rate below the applicable SER or major source thresholds for BTEX the Facility will participate in community monitoring.

<sup>29</sup> See APCD\_PHS\_EX-015 (Colo. Dep't Pub. Health & Env't, *Updated acute and chronic health guideline values for use in preliminary risk assessments (referred to as "FA2019 HGVs")* (Sep. 20, 2019)).

<sup>30</sup> See APCD\_PHS\_EX-016 (United States Environmental Protection Agency, *NAAQS Table* (March 2023)).

- For each pollutant emitted at a rate above the applicable SER, excluding total VOC, or major source thresholds for BTEX, it will develop and implement a Division-approved source specific monitoring plan. A Facility can demonstrate source specific monitoring is not necessary for an affected pollutant by completing dispersion modeling for all Facility operations covered by the operating permit and compare modeling results at and beyond the Facility boundary to Disproportionately Impacted Community Monitoring Thresholds. If modeled impacts are below the appropriate Disproportionately Impacted Community Monitoring Threshold, the Facility does not have to perform source specific monitoring for that pollutant.

At this time, the Division is not proposing this source specific monitoring assessment framework be applied to total VOCs for either new/modified sources or existing sources. The Division made this decision in consultation with subject matter experts and with consideration of the goals of the enhanced monitoring requirements of the Environmental Justice Act. When establishing a broad monitoring requirement for all potential air pollution sources, targeting source specific monitoring efforts to provide data regarding specific VOCs with known public health impacts (e.g., BTEX) rather than total VOCs allows for a more meaningful and resource efficient approach to assessing burdens being experienced by a community and sources of those burdens. The Division remains open to, and interested in, the expansion of potential source type specific applications of total VOC monitoring and engaging in total VOC monitoring as part of community monitoring efforts.

Further, the Division is also proposing that any Facility subject to the fenceline monitoring requirements for upstream oil and gas facilities that is located within a Disproportionately Impacted Community continue operation of those fenceline monitors for the duration of Facility operations.

Several parties have identified additional concerns regarding the implementation of monitoring requirements in their party status request. In particular, the Community and Environmental Partners<sup>31</sup> have raised concerns about the July 2024 effective date for the implementation of monitoring requirements, the application of different requirements in Cumulatively Impacted Communities versus Socioeconomically Vulnerable Communities, and the requirements for sources to participate in community monitoring programs. They raise additional concerns regarding the identification of monitoring technology and the communication of monitoring data. The Division appreciates this feedback and continues to consider what additional refinements can be made to the proposal to generate effective and meaningful action to advance environmental justice. At this time, the Division offers the following responses to these concerns:

First, even with additional specificity regarding the assessment of enhanced monitoring requirements, the Division believes it is crucial to convene a subject matter expert panel to develop a guideline document to support the implementation of monitoring requirements. For monitoring to be meaningful, monitoring must be implemented, and data must be collected and transferred, in a consistent manner. The development of a guideline document allows for detailed protocols to be developed that allow for that necessary consistency. Further, the development of a guideline also permits the necessary flexibility for timely refinements and adaptation of the

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<sup>31</sup> See CEP\_Req. Party Status (Feb. 13, 2023), at 6.

protocol to lessons learned over the course of initial implementation. The development of the necessary guideline will take time, and the Division believes having an implementation date in July 2024 allows the necessary time for the guideline to be developed, reviewed by stakeholders, and finalized prior to the effective date of the monitoring requirements.

Second, the Division believes targeting more stringent, source specific monitoring to Cumulatively Impacted Communities is appropriate as proposed. The Division would again like to reiterate that with this rulemaking, actions are being proposed that are responsive to the impacts being experienced by all Disproportionately Impacted Communities by using readily available data to assess where the greatest cumulative environmental impacts are being experienced and assessing more stringent environmental protections in those communities. As proposed, the source specific monitoring paired with community monitoring in Cumulatively Impacted Communities will provide the Division, and other stakeholders, with valuable data to help inform future planning efforts and implementation of protective measures in these communities where the greatest environmental health impacts are being experienced while also providing protections to Socioeconomically Vulnerable Communities with the implementation of additional community monitoring.

Third, regarding the requirement for community monitoring, the Division believes that the proposed requirement for participating in community monitoring will provide robust, meaningful, and actionable data, strategically aligns new resources with existing frameworks and efforts to maximize community benefit, and is within the authority of the Commission to require. Further, though the Division believes that requiring participation in community monitoring falls within the parameters of enhanced monitoring as required by the Environmental Justice Act, the proposal has legal standing if one does not agree with this interpretation as the Commission is allowed to set thresholds, including thresholds defined by Colorado EnviroScreen score, emission rate, modeled impact, or proximity, below which enhanced monitoring requirements do not apply, and the Commission has the authority to assess fees to be put toward the use of community monitoring. Section 25-7-114.4(5)(b)(II)(A), C.R.S., provides the Commission with the explicit authority to “require enhanced monitoring for existing sources of affected pollutants.” The statute does not define “enhanced monitoring.” This gives the Commission flexibility in developing enhanced monitoring requirements for existing sources of affected pollutants.

Fourth, regarding the identification of appropriate technology, the Division does identify potential technology that can be utilized to satisfy enhanced monitoring requirements in Part B, Section III.E.1.d. The Division recognizes the proposed language refers to technology types and believes this is appropriate for this regulation. The type of technology to be used to address enhanced monitoring technology can be varied based on source and pollutant type, and advances in available and appropriate monitoring technology are rapidly evolving. Given the broad use cases and changing landscape, the Division believes that providing more detailed expectations around technology utilization is better incorporated into the monitoring guideline. As previously stated, the monitoring guideline is a better venue for providing that level of necessary specification, and can be responsively updated to incorporate the availability of new technologies.

Fifth, and finally, the Division agrees with the Community and Environmental Partners that making all monitoring data publicly accessible is a crucial component of this endeavor. To that end, the Division is proposing that all monitoring data be collected and transmitted in accordance with Division established data standards that will be specified in the monitoring guideline. The Division will provide a format for data collection that will be established, reviewed by the public, and finalized in time for implementation by the July 2024 effective date for the monitoring requirements. The Division is undertaking this data standardization effort for all next generation, or non-regulatory, monitoring efforts being undertaken statewide to ensure consistent, comparable, high-quality data is collected. It is the Division's belief that this will greatly expand the utility of data collected, making monitoring efforts part of a robust statewide framework rather than disjointed efforts that are hard to aggregate. It is also the Division's belief that this will greatly increase the accessibility of collected data as there will be a consistent framework for reviewing and communicating data, and all data will be available from one central source.

**F. Removal of Minor Modification Permitting Process for Sources in Disproportionately Impacted Communities and Clarification of Requirements for Significant Modifications**

The Division is adding to its proposal a modification to when the minor modification permitting pathway can be utilized by sources with valid operating permits. As currently written in Part B, Section II.A.6 of Regulation Number 3, a source with a valid operating permit is able to construct and modify the source without obtaining a construction permit under select circumstances by applying for a minor permit modification. With this revision to Regulation Number 3, the Division is proposing that sources in Disproportionately Impact Communities are not able to qualify for a minor modification for projects that would otherwise qualify as minor NSR permitting actions under Part B. This proposal would provide multiple benefits including:

- Advancement of environmental justice by ensuring all modifications to sources with Title V operating permits in Disproportionately Impacted Communities are reviewed through the enhanced permitting process established by the revisions to the construction permitting process, the benefits of which are discussed in detail throughout this prehearing statement;
- Regulatory clarity for sources, Division staff, and other stakeholders through removal of ambiguity as to what actions qualify for a minor modification; and
- Minimize the detrimental impacts the processing of minor modifications has on the Division's resources by removing both the burdensome processing and review requirements necessitated by minor modification timelines and the need for the repeated and resource intensive work in response to submittal of minor modifications for Facilities where permit renewals have already been drafted.

Based on recent review of statewide minor modification data, this modification would impact no more than an average of 3 permitting actions per month, potentially resulting in 3 additional construction permit actions per month.



This proposal is within the scope of the noticed rulemaking. The notice states that the Commission will hold a rulemaking hearing to consider revisions to Regulation 3 “to establish enhanced modeling, monitoring and permitting requirements for stationary sources in disproportionately impacted communities.” This proposal is a permitting requirement or an enhanced permitting requirement for stationary sources in disproportionately impacted communities. Further, this proposal is within the authority of the Commission to adopt. Section 25-7-105(1)(d.5), C.R.S., explicitly gives the Commission the legal authority to promulgate rules that create “[a]dditional permitting requirements for sources that affect disproportionately impacted communities in conformity with section 25-7-114.4(5).”

The Division is proposing additional language refinements to Part C, Section III.B.2 to clarify significant modifications are subject to the requirements of Part B. This proposal does not change any existing practices or create new requirements, rather, it solely clarifies the existing requirement.

### **III. DISCUSSION OF ADDITIONAL ISSUES RAISED BY OTHER PARTIES**

#### **A. Request for Additional Definitions**

Various parties<sup>32</sup> have made requests that the Division provide additional definitions as part of the proposed revisions. The Division is providing additional definitions clarification for Affected Pollutants, Affected Construction Sources, and Occupied Area and has provided additional clarity through revisions to the provided regulatory language and SBAP regarding what constitutes Enhanced Modeling and Enhanced Monitoring. The Division feels these revisions adequately address party concerns and no additional definitions are necessary for regulatory understanding.

#### **B. Concerns Regarding Additional Permitting Delays**

Numerous parties<sup>33</sup> have expressed concerns that the implementation of these rules would result in additional permitting delays. The Division acknowledges that to meet the statutory requirements of the Environmental Justice Act, additional permitting requirements are necessary, and the addition of these requirements do lead to more complex permitting reviews. However, the Division was intentional in structuring these requirements to ensure efficiency of review through building on existing regulatory requirements, expanding well established practices, and providing supplementary guidelines to establish clear and consistent expectations. Specific examples of these efficiencies include:

- Standardization of Environmental Justice reports to ensure consistent and concise communication of necessary information to permit engineers;

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<sup>32</sup> CEP\_Req. Party Status (Feb. 13, 2023).

<sup>33</sup> C3\_Req Party Status (Feb. 13, 2023); DMCC\_Req. Party Status (Feb. 13, 2023); API-CO\_Req. Party Status (Feb. 13, 2023); COGA\_Req. Party Status (Feb. 13, 2023); WSCOGA\_Req. Party Status (Feb. 13, 2023); Chamber\_Req. Party Status (Feb. 13, 2023); Williams\_Req Party Status (Feb. 13 2023); CPA\_Req Party Status (Feb. 13, 2023); EVRAZ\_Req Party Status (Feb. 13, 2023); GCC\_Req Party Status (Feb. 13, 2023).

- Utilization of a known, well-established framework for the evaluation of additional controls with the expansion of the RACT process;
- Reliance on well-established guidelines as the basis for identification of enhanced modeling requirements at new and modified sources;
- Revision of proposed regulations to provide additional specificity regarding the implementation of source specific monitoring requirements with the commitment to the development of a guideline document to provide additional clarity and allow for consistency in review and implementation of monitoring requirements; and
- Establishing practice for incorporating the assessment of existing sources into established permit review timelines.

Additionally, the Division has greatly expanded their staffing capacity for permit review. The Division has plans to bring on four more construction permit engineers in the upcoming year. The Division has also hired six more permit engineers to the Title V operating permitting team with plans to bring 21 more in the upcoming year. The Division has also expanded the modeling team to a total of six modelers with plans to hire two more modelers and has created a new Community and Partnership Program and will be hiring a position into that program that will be dedicated to helping the permitting program review environmental justice summaries concurrently with modeling reports and other reviews required for permitting.

### **C. Identification of Additional Hazardous Air Pollutants as Affected Pollutants**

The Community and Environmental Partners group has indicated interest in the identification of all hazardous air pollutants (“HAPs”) as affected pollutants for consideration for enhanced modeling and monitoring. The Division recognizes the impact HAPs have on public health and the importance of action to reduce exposure. The Division considered different pathways for the incorporation of additional HAPs into the program. At this time, however, the Division is not making the recommendation that additional HAPs be identified with this rulemaking.

The Division is attempting to implement an aggressive monitoring program, encompassing a wide range of source types and pollutants. It is an ambitious, resource intensive undertaking to stand up this program as currently proposed in the timeline requested. It is the Division’s initial priority to establish a working framework that, once successfully established, can be expanded to other pollutants as appropriate.

Further, HB 22-1244 establishes a robust process for Colorado to assess and identify toxic air contaminants (“TACs”), including HAPs, for which the State would establish additional requirements. As this process has been established as statutorily required, the Division feels it necessary not to circumvent this process by identifying additional HAPs for inclusion for enhanced requirements with this rulemaking. As the parallel processes of the establishment of a working framework for source specific monitoring under the Environmental Justice Act and review and identification of priority TACs under HB 22-1244, the programs can inform each other and allow for meaningful and sustainable expansion of both.

It should also be noted that there are technological limitations on the feasibility of establishing enhanced monitoring requirements for all HAPs. There would need to be readily available technology for each HAP identified as being subject to enhanced monitoring requirements, and at this time such technology does not exist for every HAP.

#### **D. Identification of Economic Concerns**

Several parties<sup>34</sup> have indicated concerns that the proposed enhanced permitting provisions would have a detrimental economic impact. The Division recognizes that regulatory actions do not exist in a vacuum and have impacts on communities beyond the benefits to air quality. The Division has prepared EIAs and will be completing a Cost Benefit Analysis to provide additional information on known, immediate economic impacts. The Division, however, is unable to speculate on potential impacts beyond those documented in these assessments.

#### **E. Assessment of Fees**

The Community and Environmental Partners expressed concerns over the Division's proposal not including the assessment of fees as permitted by section 25-7-114.4(5)(c), C.R.S. The Division recognizes the Environmental Justice Act provides the authority for the assessment of fees to cover any additional expense incurred by the Division's and Commission's direct and indirect costs of implementing the enhanced permitting provisions. As previously discussed, the Division is assessing fees associated with the participation in community monitoring. At this time, however, the Division does not anticipate any additional costs being associated with the implementation of these rules that necessitate the levying of fees external to the existing permit processing billing framework and proposed community monitoring participation fees and, as such, is not proposing the assessment of additional fees associated with the implementation of these provisions at the time. The Division does recognize it has the authority to assess these fees in a future rulemaking if determined necessary.

### **IV. DISCUSSION OF LEGAL REQUIREMENTS AND AUTHORITY**

Section 25-7-114.4(5), C.R.S., requires the Commission to adopt rules implementing the requirements of that section no later than June 1, 2023. In adopting these rules, the Commission must "identify disproportionately impacted communities." § 25-7-114.4(5)(a)(III), C.R.S. The Commission must revisit this identification and its determination of affected pollutants at least every three years. § 25-7-114.4(5)(a)(IV), C.R.S.

The rules "must provide for enhanced modeling and monitoring requirements for new and modified sources of affected pollutants in disproportionately impacted communities that are identified or approved at the time of permit application." § 25-7-114.4(5)(b)(II)(A), C.R.S. When adopting these rules, the Commission must also "consider requiring enhanced monitoring for existing sources of affected pollutants." *Id.* The rules "must identify the types of monitoring

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<sup>34</sup> C3\_Req Party Status (Feb. 13, 2023); DMCC\_Req Party Status (Feb. 13, 2023); API-CO\_Req Party Status (Feb. 13, 2023); COGA\_Req Party Status (Feb. 13, 2023); WSCOGA\_Req Party Status (Feb. 13, 2023); Chamber\_Req Party Status (Feb. 13, 2023); Williams\_Req Party Status (Feb. 13, 2023); CPA\_Req Party Status (Feb. 13, 2023); EVRAZ\_Req Party Status (Feb. 13, 2023); GCC\_Req Party Status (Feb. 13, 2023); OXY\_Req Party Status (Feb. 13, 2023).

technology that can be used by the sources of affected pollutants and must allow for the use of alternative methods of monitoring as approved by the division.” § 25-7-114.4(5)(b)(II)(B), C.R.S.

The Commission has the authority to adopt the proposed revisions to Regulation 3 as discussed throughout this Prehearing Statement and in the proposed revisions to the SBAP.

## **V. LIST OF ISSUES TO BE RESOLVED**

1. Whether the proposed rules and revisions are consistent with the legislative purpose of the Air Pollution Prevention and Control Act, as stated in section 25-7-102, C.R.S.
2. Whether the proposed rules and revisions comply with the requirements of the State Administrative Procedure Act, section 24-4-101, C.R.S., *et seq.*, the Commission’s Procedural Rules, and other applicable law.
3. Whether the proposed rules and revisions comply with the requirements of the Air Pollution Prevention and Control Act, section 25-7-101, C.R.S., *et seq.*
4. Whether the proposed rules and revisions are consistent with the scope of the Notice of Rulemaking Hearing issued by the Commission on January 23, 2023.
5. Whether there is justification for the adoption of the proposed rules and revisions in accordance with sections 25-7-110.5, and -110.8, C.R.S.
6. Whether the proposed revisions are cost-effective and technically feasible.
7. Whether the proposed revisions comply with all other relevant requirements of state and federal law.
8. Whether to adopt the proposed revisions to Regulation Number 3.

## **VI. EXHIBIT LIST**

The Division is enclosing a revised version of Regulation Number 3 and the associated SBAP along with the Final EIA. Revisions to the regulatory language and SBAP are highlighted in yellow to indicate changes from the redlines included in the request proposal.

## **VII. WITNESS LIST**

The following potential witnesses are employees of the Division and should be contacted only through counsel.

- Jesse Fairweather - Rule Writer: Ms. Fairweather may testify regarding the development, meaning, and implementation of the proposed revisions, the final EIA, and the documents on which they are based. She may also testify regarding any alternative proposals submitted by other parties.

- Jessica Ferko - Planning & Policy Program Manager: Ms. Ferko may testify regarding the development, meaning, and implementation of the proposed revisions, the final EIA, and the documents on which they are based. She may also testify regarding any alternative proposals submitted by other parties.
- Sergio Guerra - Deputy Director of Stationary Sources: Mr. Guerra may testify regarding the development, meaning, and implementation of the proposed revisions as they pertain to air permitting and modeling. He may also testify regarding any alternative proposals submitted by other parties.
- Miriam Hacker - Permit Modeling Unit Supervisor: Ms. Hacker may testify regarding the development, meaning, and implementation of the proposed revisions as they pertain to modeling. She may also testify regarding any alternative proposals submitted by other parties.
- Garrison Kaufman - Deputy Director of Regulatory Affairs: Mr. Kaufman may testify regarding the development, meaning, and implementation of the proposed revisions, the final EIA, and the documents on which they are based. He may also testify regarding any alternative proposals submitted by other parties.
- Rani Kumar - Environmental Justice Research and GIS Analyst: Ms. Kumar may testify regarding the development and implementation of Colorado EnviroScreen. She may also testify regarding any alternative proposals submitted by other parties.
- Leah Martland - Regulatory Development & Engagement Unit Supervisor: Ms. Martland may testify regarding the development, meaning, and implementation of the proposed revisions. She may also testify regarding any alternative proposals submitted by other parties.
- Erick Mattson - Criteria Monitoring Sector Supervisor: Mr. Mattson may testify regarding the development, meaning, and implementation of the proposed revisions as they pertain to monitoring. He may also testify regarding any alternate proposals submitted by other parties.
- Joel Minor - Environmental Justice Program Manager: Mr. Minor may testify regarding the development, meaning, and implementation of the proposed revisions as well as the development and implementation of Colorado EnviroScreen. He may also testify regarding any alternate proposals submitted by other parties.
- Laura Newman - Permitting Program Manager: Ms. Newman may testify regarding the development, meaning, and implementation of the proposed revisions as they pertain to air permitting. She may also testify regarding any alternative proposals submitted by other parties.
- Michael Ogletree - Director, Air Pollution Control Division: Mr. Ogletree may testify regarding the development, meaning, and implementation of the proposed revisions; and the documents on which they are based. He may also testify regarding any alternative proposals submitted by other parties.

- Jason Schroder - Air Toxics and Ozone Precursor Manager: Mr. Schroder may testify regarding the development, meaning, and implementation of the proposed revisions as they pertain to monitoring. He may also testify regarding any alternate proposals submitted by other parties.

Respectfully submitted this 16th day of March, 20223

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PREHEARING STATEMENT OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION** was served on the Parties listed below this 16th day of March, 2023.

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